

## **Rule 8.1**

### **Experimental Rule 8.1: Assignment and management of commercial cases**

**(a) Application; definitions.** This Rule applies in counties that have established specialized courts for commercial cases, which are referred to in this Rule as “the commercial court.”

The commercial court will hear a “commercial case,” as defined in Rule 8.1(a)(1), when the case also meets the criteria of either Rule 8.1(b) or Rule 8.1(c).

1. A “commercial case” is one in which:
  - A. At least one plaintiff and one defendant are “business organizations;”
  - B. The primary issues of law and fact concern a “business organization;” or
  - C. The primary issues of law and fact concern a “business contract or transaction.”
2. A “business organization” includes a sole proprietorship, corporation, partnership, limited liability company, limited partnership, master limited partnership, professional association, joint venture, business trust, or a political subdivision or government entity that is a party to a business contract or transaction. A “business organization” excludes an individual, a family trust, or a political subdivision or a government entity that is not a party to a business contract or transaction.
3. A “business contract or transaction” is one in which a business organization sold, purchased, licensed, transferred, or otherwise provided goods, materials, services, intellectual property, funds, realty, or other obligations. The term “business contract or transaction” excludes a “consumer contract or transaction.”
4. A “consumer contract or transaction” is one that is primarily for personal, family, or household purposes.

**(b) Cases with No Amount in Controversy Requirement.** Regardless of the amount in controversy, the commercial court will hear a commercial case that:

1. Concerns the internal affairs, governance, dissolution, receivership, or liquidation of a business organization;
2. Arises out of obligations, liabilities, or indemnity claims between or among owners of the same business organization (including shareholders, members, and partners), or which concerns the liability or indemnity of individuals within a business organization (including officers, directors, managers, member managers, general partners, and trustees);

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3. Concerns the sale, merger, or dissolution of a business organization, or the sale of substantially all of the assets of a business organization;
4. Relates to trade secrets or misappropriation of intellectual property, or arises from an agreement not to solicit, compete, or disclose;
5. Is a shareholder or member derivative action;
6. Arises from a commercial real estate transaction;
7. Arises from a relationship between a franchisor and a franchisee;
8. Involves the purchase or sale of securities or allegations of securities fraud; or
9. Concerns a claim under state antitrust law.

**(c) Cases Subject to an Amount in Controversy Requirement.** If the amount in controversy is at least \$50,000, the commercial court will hear a commercial case that:

1. Arises from a contract or transaction governed by the Uniform Commercial Code;
2. Involves the sale of services by, or to, a business organization;
3. Is a malpractice claim against a professional, other than a medical professional, that arises from services the professional provided to a business organization;
4. Arises out of tortious or statutorily prohibited business activity, such as unfair competition, tortious interference, misrepresentation or fraud; or
5. Concerns a surety bond, or arises under any type of commercial insurance policy purchased by a business organization, including an action involving coverage, bad faith, or a third-party indemnity claim against an insurer.

**(d) Ineligible case types.** Subject to Rule 8.1(e)(4), the following case types generally are not eligible for assignment to the commercial court, unless other criteria specified in Rule 8.1(b) and (c) predominate the case:

1. Evictions;
2. Eminent domain or condemnation;

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3. Civil rights;
4. Motor vehicle torts and other torts involving physical injury to a plaintiff;
5. Administrative appeals;
6. Domestic relations, protective orders, or criminal matters, except a criminal contempt arising in a commercial court case; or
7. Wrongful termination of employment.

### **(e) Assignment of cases to commercial courts.**

1. **Plaintiff's duties.** To request assignment of a case to the commercial court, the plaintiff must include in the initial complaint's caption the words "commercial court assignment requested." At the time of filing the initial complaint, the plaintiff must also complete a civil cover sheet that indicates the action is an eligible commercial case.
2. **Assignment to commercial court.** The court administrator will review complaints and civil cover sheets filed in accordance with Rule 8.1(e)(1). If a complaint appears appropriate for assignment to the commercial court, the court administrator will refer the case to a commercial court judge. That judge has discretion to enter an order assigning, or declining to assign, a referred case to the commercial court.
3. **Motion to reconsider assignment to commercial court.** After assignment of a case to the commercial court, a commercial court judge, upon motion of a party or on the judge's own initiative, may reconsider whether assignment of that case to the commercial court is appropriate under Rules 8.1(a) through (d). Any party filing a motion under this Rule must do so not later than 20 days after the defendant files an answer or a motion under Rule 12, or within 20 days after that party's appearance in the case. If a commercial court judge concludes that a case is not appropriate for assignment to the commercial court, that judge may reassign the case to a general civil court.
4. **Motion to transfer to commercial court.** On the court's own initiative, on motion of a party filed within 20 days after a defendant files an answer or a motion under Rule 12, or on motion of a party filed within 20 days of that party's appearance, a judge of a general civil court may order the transfer of a case to the commercial court if that judge determines that the matter meets the criteria of Rules 8.1(a) through 8.1(d).

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5. **Complex cases.** Assignment of a case to the commercial court does not impair the right of a party to request reassignment of the case to a complex civil litigation program pursuant to Rule 8(i).

**(f) Case Management.** Rules 16(a) through 16(k) apply to cases in the commercial courts, except:

1. **Scheduling conference.** Scheduling conferences under Rule 16(d) are mandatory.
2. **Initial conference.** Prior to filing a Joint Report, the parties must confer, as set forth in the commercial court's ESI checklist, and attempt to reach agreements that may be appropriate in the case concerning the disclosure and production of electronically stored information ("ESI"), including:
  - A. Requirements and limitations on disclosure and production of ESI;
  - B. The form or formats in which the ESI will be disclosed or produced; and
  - C. If appropriate, sharing or shifting of costs incurred by the parties for disclosing and producing ESI.
3. **Joint report.** The parties' Rule 16(b) Joint Report must address the following additional items:
  - A. Whether the parties have reached any agreements with regard to ESI, what those agreements are, those areas on which they were unable to agree, and whether the parties request the court to enter an order concerning ESI;
  - B. Whether the parties reached agreements pursuant to Rule 502 of the Rules of Evidence;
  - C. Whether any party is requesting the court to enter a protective order pursuant to Rule 26(c), and if so, a brief statement concerning the need for a protective order; and
  - D. Whether there are any issues concerning claims of privilege or protection of trial preparation materials pursuant to Rule 26.1(f).

**(g) Motions.** With notice to the parties, a commercial court judge may modify the formal requirements of Rule 7.1(a), and may adopt a different practice for the efficient and prompt resolution of motions.